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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 748.

JOHN L. VEST, - - - - - - - - Petitioner,

versus

FEDERAL DEPOSIT INSURANCE CORPORATION, Receiver of The Taylor National Bank of Campbellsville, Kentucky, - - - - - - Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

ERNEST WOODWARD,
Louisville, Ky.,
Counsel for Petitioner.

JAMES E. FAHEY,
WOODWARD, DAWSON & HOBSON,
Of Counsel.

November 13, 1941.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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Supreme Court of the United States

OCTOBER TERM, 1941.

No._____

JOHN L. VEST, - - - - - - - *Petitioner,*

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER OF THE TAYLOR NATIONAL BANK OF CAMPBELLSVILLE, KENTUCKY, - *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable, the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The petitioner, John L. Vest, is an attorney residing at Walton, Kentucky.

The respondent, Federal Deposit Insurance Corporation, is a corporation created by an Act of the

Congress of the United States and is the duly appointed, qualified and acting Receiver of The Taylor National Bank of Campbellsville, Kentucky, hereinafter referred to as the Bank, having been appointed as such Receiver on August 24, 1937.

In 1931 the petitioner became acquainted with T. O. Morton, who was at that time president and chief executive officer of the Bank, and from this acquaintance there developed a close and intimate friendship between Morton and the petitioner. On January 24, 1935, without any previous arrangement, the petitioner and Morton met casually in Louisville, Kentucky. Morton informed the petitioner that he needed $10,000.00 for personal use, but that he did not wish to borrow this sum from a bank other than his own. He explained that the Bank had on hand ample funds to make the loan, but that he preferred not to borrow from his own bank. He requested the petitioner to sign an accommodation note for him in the amount of $10,000.00, payable to the Bank, and agreed that if petitioner would do this, he would pledge ample collateral to secure the amount borrowed and that petitioner would never have to pay the loan. In reliance upon these representations, petitioner agreed to and did execute an accommodation note in the face amount of $10,000.00, and Morton gave him a written memorandum listing the collateral to be pledged.

The transaction was handled through the Bank of Commerce at Louisville, Kentucky. Morton received the $10,000.00 and the securities agreed upon were de-

livered to the Bank. Petitioner received none of the money and derived no benefit from the transaction.

The petitioner, at Morton's request, executed five renewals of the obligation, the fifth bearing date of January 12, 1937. The original note and all renewals contained a notation setting forth the collateral pledged to secure them. The interest on the loan was paid by Morton, but no part of the principal had been paid when the Bank suspended active business on June 30, 1937.

The collateral pledged for the loan was found in the custody of the Bank, held to secure the loan, on September 3, 1935, by a National Bank Examiner, but at a subsequent date not disclosed by the record, Morton fraudulently converted the collateral to his own use, along with other Bank assets.

When the Bank closed, Morton was charged with violation of the national banking laws, indictments were returned and after trial resulting in verdicts of guilty, Morton was sentenced to terms in federal prison. This fact is stated as it was due to the manipulations of Morton and his efforts to secure money for his personal use that the transaction disclosed by this record occurred.

Upon assuming control of the Bank's affairs, the respondent found collateral of the value of $4,000.00 pledged on the note, which collateral was subsequently determined to be the property of persons who had placed it in the Bank for safe keeping. Its use by Morton as collateral on the loan was unauthorized and it has been recovered in this action by its owners. Un-

til the last of March or early April of 1937 the petitioner did not know that any of the collateral originally pledged upon the loan had been removed. After learning of the withdrawal of the collateral, petitioner, on April 12, 1937, went before the Board of Directors of the Bank and disclosed to them the facts with reference to the loan and the removal of the collateral.

The petitioner at no time authorized or agreed to the withdrawal of the collateral pledged to secure the loan and Morton removed it and used it for his own purposes without the knowledge of petitioner.

From the time of the petitioner's first acquaintance with Morton until the suspension of business by the Bank, Morton was not only the president and chief executive officer of the Bank, but also owned 76 per cent of its capital stock and was in exclusive control of the Bank and directed all of its operations. He dominated the Board of Directors and the Loan Committee of the Bank, and exercised the corporate will of the Bank in all matters. The acts of all other officers were merely perfunctory. The Bank was a typical one-man concern (Findings of Fact of the trial court, T. R. 153-158).

On November 9, 1937, the respondent filed its bill in equity against the petitioner in the District Court of the United States for the Eastern District of Kentucky, in which it sought to recover from the petitioner the principal amount of the last renewal note in the above transaction, together with interest which had accrued subsequent to the Bank's failure. The District Court concluded (see Opinion of the District

Court, T. R. 147-151, and Conclusions of Law of the District Court, T. R. 158-159), that, in obtaining the loan from the bank upon the note which Morton induced the petitioner to sign, the latter dealt with Morton in his capacity as president and chief executive officer of the Bank; that Morton was acting within the scope of his authority and that because Morton was the Bank's sole representative in procuring the note, the Bank could not claim any right to it except such as it acquired through Morton. It concluded that the Bank could not take the benefit of Morton's act without also taking the burdens resulting from the agreement which he had made and under which he procured the execution of the note and the withdrawal of the collateral pledged. Since the evidence clearly showed a breach of the contract pursuant to which the note was executed, notice of which under the "sole actor" doctrine was imputed to the Bank, recovery was denied.

Upon appeal to the United States Circuit Court of Appeals for the Sixth Circuit, the ruling of the District Judge was reversed and a decree entered remanding the case to the District Court, with directions to enter a decree against the petitioner for the amount sought in the respondent's petition (T. R. 165). The Circuit Court of Appeals based its decision (see Opinion of the Circuit Court of Appeals, T. R. 166-173), upon those sections of the National Bank Act which provide in part:

> "No executive officer of any member bank shall borrow from or otherwise become indebted to any member bank of which he is an executive officer, and no member bank shall make any loan or extend credit in any other matter to any of its own executive officers: * * *" (12 U. S. C. A., Sec. 375a).

And further:

> "* * * Every person who * * * aids or abets any officer, director, agent, employee or receiver in any violation of this section shall be deemed guilty of a misdemeanor * * *" (12 U. S. C. A., Sec. 592).

It is also provided:

> "* * * Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal" (18 U. S. C. A., Sec. 550).

The Court concluded that by virtue of these statutes petitioner's agreement with Morton was unlawful and, relying upon *Deitrick* v. *Greaney* (1940), 309 U. S. 190, it held that the benefit of this agreement as a defense to the note should be denied the petitioner.

The petitioner's petition for rehearing was denied on October 10, 1941 (T. R. 221), and this petition for writ of certiorari follows:

II.

REASONS RELIED ON FOR ALLOWANCE OF THE RETURN.

1. The question presented by the record below concerns the administration of the National Bank Act and as such is one of public importance which has not been, but should be, settled by this Court.

2. The question as to what extent, if any, the decision of this Court in *Deitrick* v. *Greaney* (1940), 309 U. S. 190, overrules the decision of this Court in *Dietrick* v. *Standard Surety & Casualty Co.* (1938), 303 U. S. 471, is directly presented in the record below and is one which has not been, but should be, settled by this Court.

III.

PRAYER FOR WRIT.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari issue out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding that Court to certify and send to this Court for its review and determination a full and complete transcript of the record and all proceedings of that Court had in this case, which is numbered and entitled on its docket 8567, Federal Deposit Insurance Corporation, Receiver of The Taylor National Bank

of Campbellsville, Kentucky, Appellant, v. John L. Vest, Appellee, to the end that this cause may be reviewed and determined by this Court, and that the judgment of that Court be reversed, and for such further relief as to this Court may seem proper.

JOHN L. VEST,
Petitioner,

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